

NTSB Order No.
EM-135

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 22nd day of October, 1986

PAUL A. YOST, Commandant, United States Coast Guard,

v.

GLENN SNIDER SIMMONS, Appellant.

Docket: ME-120

ORDER DENYING RECONSIDERATION

By Order EM-134, served July 16, 1986, the Board affirmed a decision of the Vice Commandant sustaining a one month suspension of appellant's merchant mariner's license on a charge of negligence found proved by a Coast Guard administrative law judge following an evidentiary hearing. The appellant has filed a motion for reconsideration of Order EM-134 in which he contends that the Board erred by not declaring unlawful the Coast Guard's refusal to accept the surrender of appellant's temporary license unless he withdrew his appeal to the Vice Commandant. We will deny the motion.¹

In his motion appellant suggest that the Board's decision on the issue in question is predicated "on the erroneous assumption that if appellant had in fact served his sentence his case would be rendered moot" (Motion at 2); that is, that the Board did not take into account that a suspension order might have an impact beyond the loss of a license for a specified period. Although we do not believe that the Board's original decision can fairly be said to have been based on any assumptions concerning the possible collateral consequences of a suspension order,² we fail to

¹The Coast Guard has filed a reply in opposition to the motion for reconsideration.

²Appellant asserts that the Board's erroneous assumption concerning mootness is evident in its observation that (Order EM-134, at 4) "[s]o far as we are aware, the Coast Guard has no obligation to decide appeals from suspension orders that already have been served...." We do not agree that the quoted language supports the inference appellant ascribes to it. That a seaman

perceive how the fact that appellant's appeal might not have been moot had he served the suspension bears on our conclusion to the effect that the Coast Guard could lawfully refuse to allow appellant to serve a suspension, unless he abandoned his appeal, at a time when no issue of mootness existed.³

ACCORDINGLY, IT IS ORDERED THAT:

Appellant's motion for reconsideration is denied.
BURNETT, Chairman, GOLDMAN, Vice Chairman, LAUBER and NALL, Members of the Board, concurred in the above order.

might have a cognizable interest in continuing an appeal despite service of the contested suspension does not mean that the Coast Guard would have to entertain the matter.

³That the Coast Guard may not dismiss as moot appeals to the Vice Commandant that have not been decided before the seaman has served a suspension ordered by a law judge, where no temporary document was sought, does not establish a boundary for the Coast Guard's discretion in instances where the seaman has applied for and received a temporary document in order to avoid having to serve a suspension before his appeal to the Vice Commandant is decided. Temporary licenses are effective for six months and are renewable. See 46 CFR §5.707(1985).